

In the High Court of Uttaranchal, at Nainital.

**First Appeal No. 909/2001
(Old No. 208 of 1996)**

1- State of U.P. through Collector Dehradun.

2- Collector, Dehradun.

3- Director Khel Khood Nideshalaya, U.P.

Lucknow

---- Defendants/Appellants.

Versus

1- Amrit Lal Suyal

S/o Gopi Ram Village and post Office

Nathwa Wala, Pargana Parwa Doon

District Dehradun.

2. Manoj Kumar S/o Gauri Shanker Goel

R/o Firozpur Cantt through the Attorney

Smt. Anita Gupta W/o Vijay Kumar Gupta

R/o 209, Noniya Mohalla, Dehradun

District Dehradun

..... Claimant/Respondents.

Sri K.P. Upadhyaya, learned Standing Counsel for the appellants.

Sri Ashok Aggarwal, learned counsel for the respondents.

**Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.**

Dated: 16-6-2006

This appeal has been preferred against the judgment and award dated 20-5-1995 passed by the Additional District Judge, Dehradun in L.A.R.No. 189 of 1991, which was filed against the award dated 28-4-1990 passed by the Collector/Land Acquisition Officer, Dehradun.

2- Brief facts of the case are that the land of Village Raipur, Parvadoon, Dehradun measuring 66.99 acres, including the land of the claimant/respondent Amrit Lal measuring 1.52 acres pertaining to Khasra No. 370 M and the land of claimant/respondent Manoj Kumar measuring 0.575 acre pertaining to Khasra No. 370 M was acquired by the State for the purpose of establishing a Sports College, for which Notification U/S 4(1) of the Land Acquisition Act was published in the local newspapers on 18-3-1988, while notification U/S 6 of the Act was published on 30-4-1988, and

possession of the acquired properties was taken by the State of U.P. on 30-12-1988. The land Acquisition Officer relying on the sale deed dated 19-7-1986 executed by Bhupendra and Surendrara in favour of Sri M.M. Ghoshal in respect of 0.19 acre land for a consideration of Rs. 20,000/- fixed the market rate of the land in question at Rs. 1,05,263.15 per acre and awarded Rs. 1,59,999-99 P. as compensation to Amrit Lal and Rs. 60,526-31 P. to Manoj Kumar and also awarded Rs. 1,060/- to Amrit Lal and Rs. 30,485/- to Manoj Kumar as compensation of trees. Objections were filed by the different owners of the land before the Collector, requesting for reference under Section 18 of the Land Acquisition Act to the effect that their land is very much fertile, irrigated and was used for Abadi. It was also alleged that nearby the land acquired there is a bus stop, post office, Hospital, Kanya Pathshala, houses, colonies, veterinary hospital as well as the colonies of Ordnance Factory and Central Opto-Electronics Factory. It was also alleged that the compensation has been fixed at a very low rate. Before the reference Court the State has alleged that the land in question is away from abadi and the so called institutions of Government of India and at the time of acquisition there was no road in the land and proper compensation has been paid to the owners of the land on the basis of exemplar sale-deed.

3- The Reference Court framed issues in the reference pertaining to the land in question. Thereafter parties adduced their evidence in support of their contentions. The claimants alleged that the compensation has been awarded at a very low rate and claimed the rate of the land @ Rs. 7,50,000/- per acre. They also filed certified copies of four sale-deeds paper Nos. 20-C, 21-C, 22-C and 23-C. Paper No. 22-C copy of sale-deed executed by Baby Lal in favour of Narendra Singh is dated 20-10-1989 and sale deed paper No. 23-C is dated 1.11.1989 which were executed after the date of notification U/S 4 of the Act hence these sale deeds were not accepted by the Reference Court for consideration to determine the compensation. So far as the sale deeds paper Nos. 20-C and 21-C are concerned, through the sale deed paper No. 20-C relates to an area 0.55 acres of Khasra No. 1386/3M dated 24-8-

87 and the land in this sale deed was sold at the rate of Rs. 4,18,000/- per acre whereas the sale deed paper No.21-C relates to an area of 0.09 acre of Khasra no. 1383/3 which was also executed on 24-8-1987 and this land was sold @ Rs. 3,73,000/- per acre. The Reference Court took this sale deed paper No.21-C as exemplar sale deed and was of the opinion that the compensation awarded by the Special Land Acquisition Officer was inadequate, therefore allowed the reference. The Reference Court fixed the market value of the acquired land as Rs. 3,73,000/- per acre. The Reference Court also ordered 25% deduction from the actually enhanced amount of compensation with regard to largeness of area, roads and school factors and on this balance amount, the petitioner was awarded solatium @ 30%, additional amount @ 12% with interest @ 9% for first year after taking over possession by the State and for the rest period awarded interest @ 15% per annum till payment.

4- Feeling aggrieved the State has filed the appeal before the Allahabad High Court, which on creation of new State, has been transferred to this Court for hearing and disposal. The appeal has been filed on the ground that the land under acquisition forms part of a large area of land measuring about 69 acres and the Special Land Acquisition Officer had determined the fair market value of the land on the basis of circle rate and good exemplars having regard to the nature, quality and location of the land and the Reference Court has erred in enhancing the market value of land to Rs. 3,73,000/-. It was also pleaded that the land under acquisition forms part of a large area of land measuring about 69 acres, holding different locations and as such the entire area is not similar in nature and quality and deduction of 25% on account of the largeness of the land is also insufficient.

5- However, during arguments in the appeal, the learned counsel for the parties agreed that the appeal be decided after allowing 33 1/3% deduction instead of 25% deduction. In this contest, a reference may be made to the case reported in **(1996) 9 Supreme Court Cases 640, Basavva (SMT) and others vs. Special Land Acquisition Officer and others** referring to the

other decisions of Hon'ble Supreme Court, held deduction between 33½ to 53% from market value for development charges to be valid and even approved the additional 12% deduction by the High Court above this limit. The Hon'ble Apex Court in the case **H.P. Housing Board Versus Bharat S. Negi and others**, reported in **(2004) 2 Supreme Court Cases, page 184** has further held that as all the sale instance are of small pieces of land and the acquisition is of the large piece of land, a deduction of 33-1/3% must be made towards development cost. In view of the law laid down by the Apex Court in H.P. Housing Board's case (supra), and also looking the nature, quality and large area of acquired land, we accordingly hold that the compensation should be paid to the respondent/owner of the land after making deduction of 33-1/3% from the difference of compensation amount enhanced by the learned Reference Court in respect of market value of the land in question on which solatium, additional compensation and interest shall also be paid as directed by the Reference Court.

6- It may also be noted here that this Court vide judgment and order dated 20-9-2004 rendered in Bunch cases of F.A. No. 81 of 2001 and other appeals, instituted in respect of the acquired land in question, has partly allowed the appeals and modified the impugned judgment and award of the Reference Court to the extent that the deduction shall be made @ 33 -1/3% instead of 25%. In other respects the impugned judgment was confirmed.

7- In view of above the appeal is allowed partly. The impugned judgment and order dated 20-5-1995 by Reference Court in L.A. Reference No. 189/91, in respect of the land under acquisition is modified to the extent that the deduction shall be made in the market rate assessed by the Reference Court @ 33-1/3% instead of 25%. In other respects the finding of the Reference Court is confirmed. No order as to cost.

(B.C. Kandpal, J.)

(P.C. Verma, J.)